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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,331	02/06/2004	Ferdinand Schermel	Z0066.008	4510
37771	7590	09/04/2007		
John Nielsen RANDICK O'DEA & TOOLIATOS, LLP 5000 HOPYARD ROAD, SUITE 400 PLEASANTON, CA 94588			EXAMINER SINGH, SUNIL	
			ART UNIT 3673	PAPER NUMBER
			MAIL DATE 09/04/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/772,331

Applicant(s)

SCHERMEL, FERDINAND

Examiner

Sunil Singh

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 50-91 and 102 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 50-91, 102 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

The examiner is not clear as to what claims should be examined. Amendment filed 7/25/06 canceled claims 1-23, amendment filed 5/25/06 list claims 1-48 as (withdrawn). Amendment filed 4/3/07 list claims 1-48 as withdrawn and claims 49, 92-101 as canceled.

It should be noted that amendment filed 4/3/07 is non-compliant for the following reasons.

Claims 1-48 should not be identified as (Withdrawn) since no restriction requirement was made.

All canceled claims should not include text.

See 37 CFR 1.121 for guidance.

Claim Objections

1. Claims 50-91, 102 are objected to because of the following informalities:

Numerous claims have multiple capitalizations of letters therein. Only the first letter of the claim should be capitalized. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 50-91, 102 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The bar/linkage structure shown in Figure 1 behind the back section; the relationship between actuator (17) depicted in Figure 3 to

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maneuver thigh and calve sections and the actuator (17) depicted in Figure 8 and the linear actuator (17) described at page 13 of the specification when describing Figure 13 are critical and essential to the practice of the invention, but is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

Insofar the claims are understood, the following rejection(s) apply:

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 50-91, 102 are rejected under 35 U.S.C. 102(b) as being anticipated by either Uchida et al. or Hanson et al. (US 6272702, 6315319).

Both documents disclose a multi-position reclining bed comprising (see disclosure) a support including plurality of sections including a back section, a buttocks section, thigh section, and a calves section, the support configured to carry a mattress thereon; a track coupled to the support; a linear actuator coupled to the support; wherein the back section is coupled to the track section and configured to move an end portion thereof vertically when the linear actuator is activated. The thigh section and calves section are configured to form a single acting rigid coplanar leg section that reclines pivotally below a horizontal plane of the buttocks section in a downward direction pivotally about an adjoining edge with the buttocks section.

Response to Arguments

6. Applicant's arguments with respect to claim 102 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Engle Patricia can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sunil Singh
Primary Examiner
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SS 6/25/07

